

This Opinion is Not a  
Precedent of the TTAB

Mailed: January 28, 2022

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board  
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*In re CRC Packaging, LLC*  
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Serial No. 88696519  
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Kate D. Strain of Strain Law, LLC  
for CRC Packaging, LLC.

Jeffrey Sjogren, Trademark Examining Attorney, Law Office 122,  
Kevin Mittler, Managing Attorney.

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Before Kuhlke, Larkin, and Dunn,  
Administrative Trademark Judges.

Opinion by Dunn, Administrative Trademark Judge:

CRC Packaging, LLC (Applicant) seeks registration on the Principal Register of  
the standard-character mark CRC BAKERY (BAKERY disclaimed) for

Bagels; Baguettes; Bakery goods; Beignets; Biscuits;  
Bonbons; Bread; Bread pudding; Brownies; Buns; Cake  
pops; Cakes; Candy; Candy bars; Cannoli; Cheesecakes;  
Chocolate; Cookies; Crepes; Croissants; Crumpets; Cup  
cakes; Custard; Danish pastries; Donuts; Eclairs; Frozen  
pie crusts; Ice cream; Kolaches; Macaroons; Madeleines;  
Muffins; Pastry; Pastry shells; Pies; Popcorn; Pralines;  
Rolls; Waffles; Corn bread, in International Class 30.

Retail bakery shops; Wholesale food distributorship services; Online retail bakery shops, in International Class 35.

Bakery services, namely, the manufacture of bakery products to order and/or specification of others in International Class 40.<sup>1</sup>

The Trademark Examining Attorney refused registration under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that Applicant's mark, as applied to the goods and services identified in the application, so resembles the certification

mark  registered on the Principal Register for fresh and processed foods for human consumption, in International Class A,<sup>2</sup> as to be likely to cause confusion, to cause mistake, or to deceive.

When the refusal was made final, Applicant appealed and requested reconsideration. After the Examining Attorney denied the request for reconsideration, the appeal was resumed. We affirm the refusal to register.

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<sup>1</sup> Application Serial No. 88696519 filed November 18, 2019, under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based upon Applicant's allegation of a bona fide intention to use the mark in commerce. The Trademark Status and Document Retrieval (TSDR) citations refer to the downloadable .pdf version of the documents available from the electronic file database for the involved application. *In re Consumer Protection Firm PLLC*, 2021 USPQ2d 238, \*3 n.3 (TTAB 2021). The TTABVUE citations refer to the Board's electronic docket, with the first number referring to the docket entry and the second, if applicable, the page within the entry.

<sup>2</sup> Registration No. 1382849 issued February 11, 1986 to the Chicago Rabbinical Council, renewed. The registration states "the certification mark, is used by persons authorized by the certifier to certify a reliable rabbinical approval of food products as being kosher."

## I. Likelihood of Confusion

Section 2(d) of the Trademark Act prohibits registration of a mark that “so resembles a mark registered in the Patent and Trademark Office” as to be likely, when used on or in connection with the goods or services of the applicant, to cause confusion, mistake, or deception. 15 U.S.C. § 1052(d). Our determination of likelihood of confusion under Section 2(d) is based on an analysis of all probative facts in the record that are relevant to the likelihood of confusion factors set forth in *In re E.I. DuPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973). *See also In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). We must consider each relevant *DuPont* factor for which there is evidence and argument. *See In re Guild Mortg. Co.*, 912 F.3d 1376, 129 USPQ2d 1160, 1162-63 (Fed. Cir. 2019).

In considering the evidence of record on these factors, we keep in mind that “[t]he fundamental inquiry mandated by Section 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks.” *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976); *In re i.am.symbolic, llc*, 127 USPQ2d 1627, 1628 (TTAB 2018). The Section 2(d) analysis does not vary when the cited registration is for a certification mark, but because the certification mark owner does not itself use the mark, the question of whether there is a likelihood of confusion is based on a comparison of the mark as applied to the goods or services of the certification mark users. *In re St. Julian Wine Co., Inc.*, 2020 USPQ2d 10595, \*3 (TTAB 2020); *In re Accelerate s.a.l.*,

101 USPQ2d 2047, 2049 (TTAB 2012); *Motion Picture Ass'n of Am. v. Respect Sportswear, Inc.*, 83 USPQ2d 1555, 1559-60 (TTAB 2007); *Tea Bd. of India v. Republic of Tea Inc.*, 80 USPQ2d 1881, 1897 (TTAB 2006). *Accord Procter & Gamble Co. v. Cohen*, 375 F.2d 494, 153 USPQ 188 (CCPA 1967); *Jos. S. Cohen & Sons Co., v. Hearst Mags., Inc.*, 220 F.2d 763, 105 USPQ 269 (CCPA 1955).

**A. Similarity or Dissimilarity between the Marks**

We now consider the similarity or dissimilarity between Applicant's mark CRC BAKERY and the cited mark . We compare the marks in their entireties as to appearance, sound, connotation, and commercial impression. *See Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée en 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1689 (Fed. Cir. 2005). "Similarity in any one of these elements may be sufficient to find the marks confusingly similar." *In re Inn at St. John's, LLC*, 126 USPQ2d 1742, 1746 (TTAB 2018), *aff'd mem.*, 777 F. App'x (Fed. Cir. 2019). "The proper perspective on which the analysis must focus is on the recollection of the average customer, who retains a general rather than specific impression of marks." *In re i.am.symbolic, llc*, 127 USPQ2d 1627, 1630 (TTAB 2018).

In the registered certification mark , the letters CRC form the dominant part of the mark. We find the letters CRC dominant in the mark because the design is limited to a simple triangular background shape, with no distinctive element which alters the commercial impression created by CRC. *See In re Dixie Rests. Inc.*, 105 F.3d

1405, 41 USPQ2d 1531, 1534 (Fed. Cir. 1997) (“Neither the design element nor the generic term ‘café’ offers sufficient distinctiveness to create a different commercial impression. Indeed, as the board found, the design is an ordinary geometric shape that serves as a background for the word mark.”); *Jenkins Bros. v. Newman Hender & Co. Ltd.*, 289 F.2d 675, 129 USPQ 355, 358 (CCPA 1961) (“a diamond border or outline per se has little significance as an indicator of the source or origin of the goods on which it appears”).

We disagree with Applicant’s arguments that, based on the stylization of the

letters, the registered mark  will be perceived as “a large R within a triangle” or, “according to the traditional reading of monograms,” as RCC instead of CRC.<sup>3</sup> As to the first argument, while the central letter R is about a third larger than the flanking letters C, that is not such a difference in size as to make the letters C difficult to notice. One letter being larger presents different facts than those in the case cited by Applicant, *In re Covalinski*, 113 USPQ2d 1166, 1168 (TTAB 2014), in which there were multiple graphic devices serving to diminish the impact of some literal elements of the mark.<sup>4</sup> We must consider marks in their entireties, and the registered mark



is dominated by the letters CRC.

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<sup>3</sup> 6 TTABVUE 8.

<sup>4</sup> The stylized mark in the cited *Covalski* case:

We acknowledge the article on “monogram etiquette” in the record, which defines a monogram as a form of identification combining someone’s initials, often used for decorative purposes, in which the initial for the last name appears in the middle, flanked by smaller initials for the first and middle names.<sup>5</sup> However, the article does not refer to any application of monograms to food, wholesale distributorship of food, baking or bakery services, or kosher certification by certifiers such as the registrant. In fact, the examples of monograms in the article are limited to personal items such as clothing, jewelry, and purses, or household items such as linens and glassware. Significantly, Applicant does not argue that the letters CRC would be perceived as a person’s initials, and so there is no reason why consumers of foods bearing the registered certification mark would regard the mark as a RCC “monogram” instead of CRC.

Turning to Applicant’s mark CRC BAKERY, because it appears first in the mark and has not been disclaimed, we find the term CRC forms the dominant part of Applicant’s mark. *See In re Nat’l Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985) (“It is well settled that one feature of a mark may be more significant than another, and it is not improper to give more weight to the dominant feature in determining the commercial impression created by the mark as long as the mark is considered in its entirety.”). The term BAKERY is defined as “a place for baking or



<sup>5</sup> May 3, 2021 Request For Reconsideration TSDR 13-23.

selling baked goods.”<sup>6</sup> This disclaimed term is generic as applied to Applicant’s services and, at minimum, highly descriptive as applied to Applicant’s goods. *In re Johanna Farms, Inc.*, 222 USPQ 607, 609 (TTAB 1984) (“The term ‘yogurt’ [in the mark] is concededly the name of the goods. That fact is uncontrovertible where, as here, the same term has been used in the identification of goods for which registration is sought.”).

Comparing the marks, the dominant elements of the marks  and CRC BAKERY, the letters CRC, are identical. While the registered version is stylized, Applicant seeks registration in standard characters, which would allow Applicant to employ the identical stylization of the letters CRC. *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1847-1848 (Fed. Cir. 2000) (“The record shows that the registration for the LASERSWING mark contains a ‘[standard character] drawing.’ ... Therefore, it is irrelevant that Cunningham has a particular display for his mark in commerce, and the Board was correct to ignore those features.”). *Accord In re Aquitaine Wine USA, LLC*, 126 USPQ2d 1181, 1186-87 (TTAB 2018). While the additional elements of the triangle design in the registered mark and the term BAKERY in Applicant’s mark are different, as a background design and a generic or highly descriptive term, they carry less weight in each mark.

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<sup>6</sup> February 28, 2020 Office Action TSDR 21 (Merriam-Webster Dictionary).

We are not persuaded by Applicant's argument that the marks are distinguishable because the registered certification mark is "inconspicuously" placed on the goods.<sup>7</sup> In support, Applicant points to examples of food products bearing the registered certification mark.<sup>8</sup> Applicant has not introduced any evidence of commercial requirements or practices for the use of certification marks which would support an argument that certification marks in general, or food certifications marks in particular, are limited to any particular placements. Applicant contends only that the registered mark as actually used is inconspicuous.

The third-party user of the certification mark, and not the registrant as the certifier, decides how the certification mark is placed on the goods and is free to alter its current placement of the certification mark. *Midwest Plastic Fabricators, Inc. v.*

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<sup>7</sup> 6 TTABVue 11-12. Applicant relies on *In re Sharfman*, 156 USPQ 412 (TTAB 1967), a pre*DuPont* case involving a Section 2(d) refusal to register another kosher certification mark, the stylized letter "K," over a trademark for food products consisting of the letter "K" in a circle. In reversing the refusal, the Board stated that "[i]t is common knowledge that the letter 'K' when used in a certification mark for food products signifies that these goods are of a Kosher quality," and "cannot be exclusively appropriated as a certification mark by any individual or company." *Id.* at 413. *Sharfman* cited no precedent and in turn has not been cited in any subsequent Board case. The Board, focusing on the inherently different functions between certification marks and trademarks, reversed the refusal to register in the context of these different purposes. The Board referenced the manner of use of the "K" certification mark as "usually inconspicuously displayed" and "found there is no reasonable likelihood under actual market conditions for confusion to arise ...". *Id.*

However, as set forth earlier, the *DuPont* analysis is applicable for determining likelihood of confusion with respect to both certification marks and trademarks. *In re Accelerate s.a.l. et al., supra*, Under *DuPont*, we can presume neither that any particular certification mark is confined by its nature to a particular display, nor that certification mark users are restricted to any one use of such marks. *Cf. San Fernando Elec. Mfg. Co. v. JFD Elec. Components Corp.*, 565 F.2d 683, 196 USPQ 1, 3 (CCPA 1977) ("In view of opposer's ownership of its presently existing registration of MONOCERAM for 'capacitors' broadly, the particular uses of the mark it happened to be making at the time of testimony are irrelevant ... Opposer's rights are not to be tied to its current business practices, which may change at any time.").

<sup>8</sup> August 27, 2020 Response TSDR 12, November 2, 2020 Office Action TSDR 34-37.

*Underwriters Labs., Inc.*, 906 F.2d 1568, 15 USPQ2d 1359,1362 (Fed. Cir. 1990) (“the general practice, in accord with the statute, allows for a third party to apply the certification mark”). Registrant is obliged only to ensure that the public is not misled, and that there is no “use of the mark for purposes other than certification.” *Id.* at 1361 (“if a certification mark’s owner also allowed the mark to be used as a trademark, there would be a basis for cancellation of the registration”). Moreover, were Applicant to obtain a registration, there is no trademark statutory or rule requirement which would bar Applicant from a similar “inconspicuous” placement, so that prospective consumers could encounter Applicant’s mark CRC BAKERY in close proximity to, and the same size as, the registered CRC certification mark.

Regardless of the size and placement of the involved marks, a consumer who has “a general rather than specific recollection” of the cited certification mark, *i.am.symbolic*, 127 USPQ2d at 1630, who separately encounters Applicant’s mark, could believe that it reflects kosher certification of its bakery and related goods.

Addressing the marks  and CRC BAKERY in their entirety, we find that the similarity created by the inclusion of the dominant, shared term CRC is not outweighed by the differences between the marks. The first *DuPont* factor, similarity of the marks, weighs in favor of finding likelihood of confusion.

#### **B. Similarity or Dissimilarity between the Goods and Services**

With regard to the similarity or dissimilarity between Applicant’s goods and services, and the goods in the cited registrations, we must make our determination

under these factors based on the goods as they are identified in the application and cited registration. *See In re i.am.symbolic, llc*, 866 F.3d 1315, 123 USPQ2d 1744, 1749 (Fed. Cir. 2017). The application and registrations themselves may provide evidence of the relationship between the goods and services. *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001, 1005 (Fed. Cir. 2002); *In re Country Oven, Inc.*, 2019 USPQ2d 443903, \*5 (TTAB 2019). In assessing their relationship and nature, the Board “considers whether ‘the consuming public may perceive [the respective goods and services of the parties] as related enough to cause confusion about the[ir] source or origin ....’” *In re St. Helena Hosp.*, 774 F.3d 747, 113 USPQ2d 1082, 1086 (Fed. Cir. 2014) (quoting *Hewlett-Packard Co. v. Packard Press Inc.*, 62 USPQ2d at 1004).

As stated, Applicant seeks registration for “bagels; baguettes; bakery goods; beignets; biscuits; bonbons; bread; bread pudding; brownies; buns; cake pops; cakes; candy; candy bars; cannoli; cheesecakes; chocolate; cookies; crepes; croissants; crumpets; cup cakes; custard; danish pastries; donuts; eclairs; frozen pie crusts; ice cream; kolaches; macarons; madeleines; muffins; pastry; pastry shells; pies; popcorn; pralines; rolls; waffles; corn bread,” and also for the “retail bakery shops; wholesale food distributorship services; online retail bakery shops” and “bakery services, namely, the manufacture of bakery products to order and/or specification of others.” Because the goods and services are not restricted, we presume they include both kosher and non-kosher versions. *In re St. Julian Wine Co., Inc.*, 2020 USPQ2d 10595, \*4 (“Because the identification of Applicant's [hard cider] is unrestricted, we

must assume that "hard cider" encompasses hard cider of all types, including hard cider made from apples grown in Michigan or hard cider originating from Michigan.”). The goods in the cited registration are “fresh and processed foods for human consumption.” However, because a certification mark may not be used by the owner of the mark, but is instead used by authorized users, the comparison is based on the authorized users’ goods, which in this case consist of “fresh and processed kosher foods for human consumption.” *Id.*, at \*3.

All of Applicant’s International Class 30 food items are included within, and so are identical in part to, the goods identified in the registration as “processed kosher foods for human consumption.” *See In re Solid State Design Inc.*, 125 USPQ2d 1409, 1413, 1413 (TTAB 2018) (“The identification leaves the goods broadly described as ‘[d]ownloadable mobile applications for mobile phones and mobile electronic devices,’ and we must deem those goods to include all ‘goods of the nature and type described therein,’ which encompass Applicant’s more specifically identified type of “[c]omputer application software for mobile phones.”). The identity of certain goods within the identifications means that no more is necessary to demonstrate a finding of similarity of goods to support a likelihood of confusion as to Class 30 in the application. *See SquirtCo v. Tomy Corp.*, 697 F.2d 1038, 216 USPQ 937, 938-39 (Fed. Cir. 1983) (holding that a single good from among several may sustain a finding of likelihood of confusion); *Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp.*, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981) (likelihood of confusion must be found if there is likely to be confusion with respect to any item that comes within the identification of goods or

services in the application). *See also In re FabFitFun, Inc.*, 127 USPQ2d 1670, 1672 (TTAB 2018) (In view of the identity of the goods as identified in the application and registration, “there is no need for us to further consider the relatedness of the goods.”).

As to Applicant’s International Class 35 and 40 services, because Registrant’s “fresh and processed foods for human consumption” include baked food items, and baked foods are the product of bakery and baking services, we find the registered goods are closely related to Applicant’s bakery and baking services. *See In re Country Oven, Inc.*, 2019 USPQ2d at \*5-6 (“Thus, we must consider Applicant’s [retail bakery shop] services to encompass a broad spectrum of bakery products that quite obviously includes goods of the type identified in the cited registration, i.e., ‘bread buns’.”). The record includes a definition of “wholesaling” as the sale of merchandise to anyone other than a standard consumer, such as retailers, professional business users, and other wholesalers.<sup>9</sup> The foods subject to Registrant’s certification could be the subject of Applicant’s wholesale food distributorship services, and so we find that those foods and Applicant’s services also are closely related. *See In re United Serv. Distribs., Inc.*, 229 USPQ 237, 239 (TTAB 1986) (“We believe that this [retailer] class of customer, familiar with health and beauty aid products sold under a particular mark, upon coming into contact with a distributor of health and beauty aid products whose distributorship services are rendered under a similar mark, would erroneously believe that said distributorship services and the beauty aid products were somehow sponsored by or associated with the same source.”).

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<sup>9</sup> November 2, 2020 Office Action TSDR 25.

The relationship between Applicant’s International Class 35 and 40 bakery and baking services and the broadly defined foods in the cited registration, which is clear from the identification of goods and services, is corroborated by the evidence of third-party use. The record includes webpages of third parties offering both fresh and processed foods such as those certified by Registrant and bake shop, baking, and wholesale food distributorship services such as those offered by Applicant – Three Brothers Bakery, Magnolia Bakery, Carlo’s Bake Shop, Christopher’s Bakery, Hellas Restaurant and Retail Bakery, Wolferman’s Bakery, Sweet E’s Bake Shop, Soulfully Yours Bakery, Tiffany’s Bakery, Nashville Sweets, Belmar Bakery, A Little Bakery, European USA, Bluepoint Bakery, Ariola Foods, Inc., Al Cohen’s, La Rosa’s Wholesale Bakery, Davidovich Bakery, and La Segunda.<sup>10</sup> This evidence supports the relatedness of the goods and services in the application and cited registration by showing that consumers are accustomed to encountering such goods and services offered under the same mark. *See In re Detroit Athletic Co.*, 903 F.3d 1297, 128 USPQ2d 1047, 1050 (Fed. Cir. 2018) (crediting relatedness evidence that third parties use the same mark for the goods and services at issue because “[t]his evidence suggests that consumers are accustomed to seeing a single mark associated with a source that sells both”); *Hewlett-Packard*, 62 USPQ2d at 1004 (stating that evidence that “a single company sells the goods and services of both parties, if presented, is relevant to a relatedness analysis”).

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<sup>10</sup> February 28, 2020 Office Action TSDR 9-20; November 2, 2020 Office Action TSDR 8-24, 26-33.

Applicant does not dispute that the registration for “fresh and processed foods for human consumption” includes its own goods and is closely related to its services. We find this *DuPont* factor favors finding a likelihood of confusion.

**C. Similarity or Dissimilarity between Channels of Trade and Classes of Purchasers**

Where, as here, the goods of the application at issue and the cited registrations are in part identical, we must presume that the channels of trade and classes of purchasers for these goods are the same. *See In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012); *In re Info. Builders Inc.*, 2020 USPQ2d 10444, \*3 (TTAB 2020). Applicant does not contend that there are different channels of trade for its goods and services and the goods listed in the registration.

As to the classes of consumers, Applicant tries to rebut this presumption with evidence that the prospective consumers of foods bearing the registered certification mark are sophisticated. More specifically, Applicant contends that the cited certification mark to certify rabbinical approval of food products as being kosher limits the classes of purchasers for those foods to sophisticated and discerning consumers.<sup>11</sup> The record includes the following articles on kosher food relevant to the sophistication of the food purchasers who would encounter the registered certification mark:

*Kosher Food: Everything You Need to Know (01/25/19)*

Foods certified kosher feature a label on their packaging indicating that they've met all of the necessary requirements. There are dozens of different kosher labels, many of which come from different certifying organizations. If a

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<sup>11</sup> 6 TTABVUE 10-14.

food is certified for Passover, this will be indicated in a separate label. The labels may also indicate if a food is dairy, meat, or pareve.

If you're trying to adhere to kosher dietary guidelines, it's best to choose only foods with these labels in order to avoid accidentally eating something non-kosher.

<https://www.healthline.com/nutrition/what-is-kosher><sup>12</sup>

*The Kosher-Industrial Complex Always Delivers (Boston Globe 11/18/18)*

America has undergone a kosher revolution. It wasn't all that long ago that the Jewish dietary laws were of interest to just a tiny niche of the public. Today, kosher food is everywhere.

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In the 1960s and 1970s, when my four siblings and I were kids, we weren't allowed to eat Oreo or Pepperidge Farm cookies. Tootsie Rolls were off limits, too. So were Bazooka bubble gum and Jelly Bellies. ... Now, however, all of them are kosher, along with scores of thousands of other products available in American supermarkets – everything from salsa and spring rolls to salmon and scotch. And thereby hangs a tale: a tale of age-old religious commitment combining with capitalist innovation to transform a major US industry.

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America has undergone a kosher revolution. It wasn't all that long ago that demand for kosher food was restricted to a tiny niche of the public – Jews amount to less than 2 percent of the US population, and only a minority of Jews keep kosher. ... Today kosher is everywhere. More than 40 percent of packaged foods and beverages now sold in the United States are kosher, their labels bearing the logo of a trusted kashrut-certifying agency, such as the Orthodox Union or Star-K. ... More than 11.2 million Americans regularly buy kosher food, 13 percent of the adult consumer population ... But only about 1.5 million of those customers are Jews committed to keeping kosher... which means “at least 86 percent of the nation's 11.2 million kosher consumers are not religious Jews.”

<https://advance.lexis.com/documents/?pdmfid=1000516&crid=d696c8ff-759d-482c-800d-afedc7808a34&pddocfullpath><sup>13</sup>

*Who is Buying Kosher? 09/15/16*

More and more, the market for kosher is becoming a cosmopolitan landscape. It is not simply limited to Jewish consumers as some may assume. In fact, as the twenty-first century develops and the culture of food evolves, those that buy kosher products do so from a vast variety of religions and walks of life.

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<sup>12</sup> May 31, 2021 Request For Reconsideration TSDR 50-62.

<sup>13</sup> June 25, 2021 Office Action TSDR 12.

As many as three in five of the people that buy kosher food are, in fact, non-Jewish. This growing trend is a result of the increasing desire for provenance and traceability. Those with dietary restrictions or allergies - such as nuts - look to kosher certifications as a way to be entirely sure of the content of the food. ... As a consequence, there is also a growing number of companies that are achieving kosher certification to keep up with the demand. In countries such as the USA as much as 41% of the packaged food in the country is kosher certified.

[https://www.klbdkosher.org/news-and-articles/who\\_is\\_-buying\\_kosher/#](https://www.klbdkosher.org/news-and-articles/who_is_-buying_kosher/#).<sup>14</sup>

*What Does Kosher for Passover Mean for Food Allergies? (Medical review April 2013)*

Kosher for Passover foods can be particularly helpful to those managing corn allergy or both milk and soy allergy.

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Kosher for Passover foods that KFA members have found helpful include:

- Margarine (made without dairy, and soy and corn)
- Chocolate chips (made without milk or soy)
- Whipped topping (made without dairy, and soy and corn)

<https://www.kidswithfoodallergies.org/what-does-kosher-passover-mean-food-allergies.aspx><sup>15</sup>

*Are Kosher Foods Better for You? 02/27/12*

Kosher is not a "style" of eating or cooking. With specific exceptions (pork, shellfish, rodents, birds of prey), almost any food can be kosher if it is prepared in accordance with the religious rules.

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I've read that in recent years there's been a boom in sales of kosher foods and that nearly two thirds of all customers believe they're getting a higher quality product than is otherwise available in supermarkets. About half of all customers say that they choose kosher food because they view it as healthier than other foods and about a third do so because they think kosher food is safer. Surprisingly, the survey that led to these findings also revealed that only 15 percent of customers buy kosher foods in order to conform to religious dietary rules.

<https://www.drweil.com/diet-nutrition/nutrition/are-kosher-foods-better-for-you/><sup>16</sup>

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<sup>14</sup> November 2, 2020 Office Action TSDR 38-39.

<sup>15</sup> May 31, 2021 Request For Reconsideration TSDR 42-44.

<sup>16</sup> May 31, 2021 Request For Reconsideration TSDR 45-49.

This evidence supports more than one conclusion relevant to the likelihood of confusion determination. On one hand, there is a significant number of food buyers who seek kosher certification for a variety of reasons not limited to religious observance. Those consumers, by their willingness to seek certified goods, are likely to exercise a higher degree of care than the average consumer of food.

On the other hand, the record shows that in response to the growth of those seeking kosher foods, many food producers changed to kosher processing, even though many or most of their prospective consumers may not demand or realize that the food item they purchase is kosher.<sup>17</sup> In addition, the record shows the registered certification mark used on goods with broad appeal such as chocolate chip cookies, tortillas, milk, popcorn:



Figure 1 Kosher cookies<sup>18</sup>

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<sup>17</sup> We find that this market change is a significant difference from the “small portion [of the general public], which is comprised of those of the Jewish faith who only purchase kosher foods for consumption” considered in the *Sharfman* case. *Sharfman*, 156 USPQ at 413.

<sup>18</sup> November 2, 2020 Office Action TSDR 34.

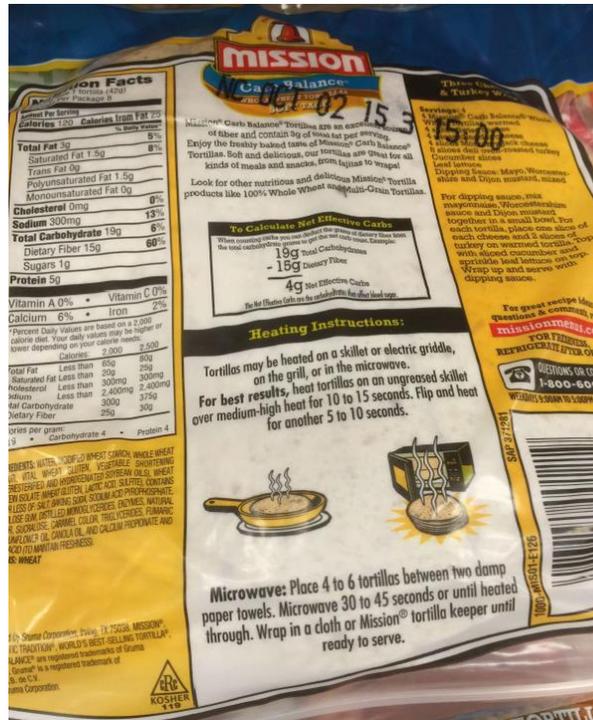


Figure 2 Kosher tortillas<sup>19</sup>



Figure 3 Kosher milk<sup>20</sup>

<sup>19</sup> August 27, 2020 Response TSDR 12.

<sup>20</sup> November 2, 2020 TSDR 36.



Figure 4 Kosher popcorn<sup>21</sup>

In view of the evidence that kosher processing now applies to a wide range of foods not limited to Jewish observance, we disagree with Applicant’s argument that the registered goods appeal only to sophisticated consumers. *See Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1163 (Fed. Cir. 2014) (“Board precedent requires the decision to be based ‘on the least sophisticated potential purchasers.’”).

Moreover, even a sophisticated consumer, who may seek one type of kosher certified food under the registered  mark may be confused if they encounter Applicant’s CRC BAKERY mark for a different type of food. Given the close similarity between Applicant’s and Registrant’s marks, “careful purchasers who do notice the difference in the marks will not necessarily conclude that there are different sources

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<sup>21</sup> November 2, 2020 TSDR 37.

for the goods, but will see the marks as variations of each other, pointing to a single source.” *In re Hitachi High-Techs. Corp.*, 109 USPQ2d 1769, 1774 (TTAB 2014).

Even according sophistication to some purchasers of the goods subject to certification under the registered mark, we find the *DuPont* factors regarding the channels of trade and classes of purchasers weigh in favor of finding a likelihood of confusion.

#### **D. Balancing the Factors**

We have considered all of the arguments and evidence of record, and all relevant *DuPont* factors. When we balance the *DuPont* factors, we conclude that the marks



and CRC BAKERY share the identical dominant term, create highly similar commercial impressions, and are applied to in-part identical goods and closely related services in the same channels of commerce and to many of the same general consumers, and these factors outweigh any customer sophistication in that part of the purchasing public which seeks foods bearing the registered certification mark, so that Applicant’s mark is likely to create confusion with the registered mark.

#### **II. Decision**

The refusal to register Applicant’s mark CRC BAKERY is affirmed in all three classes.